HIGH COURT OF UTTARANCHAL AT NAINITAL

F.A. No. 526 of 2001
Old No. 570 of 1995

Tehri Hydro Development Corporation ..... Petitioners

Versus

Abdul Gaffar and others ..... Respondent

Dated: 9.8.2004

Sri U.K. Uniyal, Sr. Advocate assisted by Sri Sobhit Saharia, Advocate for the appellant.
Sri N.K. Joshi, Advocate for the respondents

Hon'ble Rajesh Tandon, J.

This is an appeal against the judgment and decree dated 21.07.1995 passed by the District Judge, Tehri Garhwal in LAR No.12 of 1988, Abdul Gaffar vs. State of U.P.L.

Briefly stated the facts giving rise to the present appeal are that the land was acquired under section 4 of the Land Acquisition Act on 10.3.1984 and notification under section 6 of the Act, was published in March 1985. The Special Land Acquisition Officer, Tehri Garhwal has given award on 18.3.1987 by determining total amount of Rs. 24,77,804.55. The claimants sought reference under section 18 of the Land Acquisition Act for enhancement of compensation.

The short submission of the petitioner is that the Tehri Hydro Corporation has not been made party in the reference proceedings. The land has been acquired in public interest for the benefit of the petitioner. The petitioner is a necessary party

as well as in reference. Under section 18 of the Land Acquisition Act, it is mandatory to implead the acquiring body for whose benefit the land has been acquired.

In paragraph 21 of the counter affidavit, it has been mentioned that compensation of Rs.24,77,804.55 was awarded and compensation has already been taken by the respondents claimants. Corporation has also allotted residential plot no.177 /70 to the respondent at New Tehri Township.

The counsel for the respondent has submitted that although the State was a party to the proceedings but merely as the acquiring body has not been impleaded as party, it will not affect the acquiring body as he has been heard.

A perusal of the order of reference shows that issue no. 2 was decided against the appellant and the reference court has recorded a finding that any agency of the Government need not be impleaded in such case.

In the case of U.P. Avas Evam Vikas Parishad Vs Gyan Devi reported in (1995) 2 SCC 326, it has been held that the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award.

Similar view has been taken in the case of Kanak & another Vs. U.P. Avas Evam Vikas Parishad report in (2003) 7 Supreme Court Cases 693, where similar controversy came up for decision before the Apex Court, where the Apex Court, relying upon the judgment of U.P. Avas Evam Vikas Parisahd Vs Gyan Devi reported in (1995) 2 SCC 326, has held as under:

> *"32. It is not in doubt or dispute that no formal notice was served upon the respondent. A notice to a person, for whose benefit the land is acquired or who is*

responsible for payment of compensation amount, was mooted before the courts of law on the construction of Section 50 of the Land Acquisition Act. It was held that sub-section (2) of Section 50 must be construed as conferring a right of notice on the local authority at the stage of determination of the amount of compensation before the Collector as well as the Reference Court. It is not in dispute that the respondent was not represented even before the Collector. In the aforementioned situation, this Court in ***Gyan Devi*** *held:*

> *'In other words the right conferred under Section 50(2) of the LA Act Carries with it the right to be given adequate notice by the Collector as well as the Reference Court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the LA Act, can, therefore, be regarded as an integral par of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the Reference Court and has not suffered any prejudice on account of failure to give such notice.'*

33. It is not correct to contend that by reason of non-service of notice the respondent was not prejudiced. The exception carried out by this Court in the matter of

service of notice to the local authority is not only confined to its knowledge about the pendency of the acquisition proceedings before the Collector or the Reference Court but also any prejudice on account thereof. The said two conditions are to be read conjunctively and not disjunctively.

34. The respondent filed a writ petition because it was seriously prejudiced. This Court in Gyan Devi envisaged the following legal situations:

(1) No notice was given to the local authority under sub-section (2) of Section 50 of the LA Act and as a result the local authority could not appear before the Collector to adduce evidence;

(ii) Notice was served on the local authority and in response to said notice the local authority papered before the Collector; and

(iii) Notice was served on the local authority but in spite of service of such notice the local authority failed to appear and adduce evidence before the Collector:

35. The Court laid down the criteria where the local authority would be a necessary party of proper party. It was observed:

> *'Since the amount of compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50(2) of the LA Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the*

High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. In a case where the local authority has failed to appear in spite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated by mala fides or is perverse.'

36. It was further held that presence of the local authority is necessary for a just decision on the question involved in the proceedings before the Reference Court as that would enable it to adduce evidence therein and as such it was entitled to be impleaded as a party.

38. However, having said so, in our opinion, the High Court should have remitted the matter back to the Reference Court with a direction that the respondent Parishad may be impleaded as a party so as to enable it to cross-examine the witnesses examined on behalf of the claimants and examine its own witness and bring on record such other materials as it may deem fit and proper. It goes without saying, it would also be open to the claimants to adduce evidence to the contra."

In view of the law laid down by the Apex court the matter is remanded back to reference Court for deciding it afresh in

the light of the observation made above, within a period of two moths after the receipt of the certificate copy of the order.

Consequently, the appeal is allowed. No order as to costs.

(Rajesh Tandon, J.)

9.8.2004

*Dhyani